

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ComUnity Lending, Inc.,

NO. C 10-00930 JW

NO. C 10-00931 JW

Plaintiff,

v.

**ORDER REQUIRING SUPPLEMENTAL  
BRIEFING**

Mai Christina Pham, et al.,

Defendants.

Katherine Buckmeyer, et al.,

Plaintiffs,

v.

ComUnity Lending, Inc.,

Defendant.

Presently before the Court are Appellants' Appeals from the Bankruptcy Court's Memorandum Decision and Order on Motions to Determine Administrative Priority of Attorneys' Fees Claim.<sup>1</sup> Appellants appeal a ruling of the Bankruptcy Court refusing to treat this Court's award of attorney fees to appellants as a priority administrative claim, even though the losing party's claim for attorney fees arising out of the same proceeding was treated as an administrative priority claim.<sup>2</sup>


<sup>1</sup> (See Notice of Appeal, hereafter, "Pham Appeal," Docket Item No. 1-1 in No. C 10-00930 JW; Notice of Appeal, hereafter, "Buckmeyer Appeal," Docket Item No. 1 in No. C 10-00931 JW.) Both Appeals are "identical appeal[s] of the same ruling." (See Appellant's Opening Brief at 1, hereafter, "Buckmeyer Brief," Docket Item No. 7 in No. C 10-00931 JW.)

<sup>2</sup> (See Buckmeyer Brief at 1; Appellants' Opening Brief at 1, Docket Item No. 7 in No. 10-00930 JW.)

A full statement of the facts of the underlying case can be found in the Court's December 11, 2008 Order Granting Plaintiffs' Motion for Summary Judgment.<sup>3</sup> On January 30, 2009, the Court entered judgment in favor of Plaintiffs and against Defendant ComUnity, declaring that certain disputed funds were not assets of a bankruptcy estate, but instead belonged to participants in a Non-Qualified Deferred Compensation Plan.<sup>4</sup> On February 9, 2009, the Trustee filed a Notice of Appeal to the Ninth Circuit.<sup>5</sup> On April 24, 2009, the Court granted Plaintiffs' Motions for Attorney Fees, but denied Plaintiffs' request that the Court adjudicate the priority of any costs or fees awarded.<sup>6</sup> On February 16, 2010, the Bankruptcy Court held that Plaintiffs' fee awards were not entitled to priority.<sup>7</sup> On March 4, 2010, Plaintiffs appealed the Bankruptcy Court's decision regarding the priority of fee awards to this Court.<sup>8</sup> On October 8, 2010, the Ninth Circuit reversed this Court's order granting Plaintiffs' Motion for Summary Judgment and vacated this Court's "judgment and the order awarding Plaintiff their attorneys' fees."<sup>9</sup> That action is now set for trial on June 7, 2011.

In light of the procedural posture of these cases, on or before **May 13, 2011**, the parties shall file a Joint Statement explaining whether the Appeals in No. C 10-00930 JW and No. C 10-00931 JW are moot as the result of the Ninth Circuit's October 8, 2010 opinion.

Dated: May 2, 2011

  
 JAMES WARE  
 United States District Chief Judge

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<sup>3</sup> (See Docket Item No. 59 in No. 08-00201 JW.)

<sup>4</sup> (See Docket Item Nos. 71 and 72 in No. 08-00201 JW.)

<sup>5</sup> (See Docket Item No. 73 in No. 08-00201 JW.)

<sup>6</sup> (See Order Granting Motion for Attorney Fees; Denying Motion to Determine Priority, Docket Item No. 105 in No. 08-00201 JW.)

<sup>7</sup> (See Buckmeyer Brief at 6.)

<sup>8</sup> (See Buckmeyer Appeal; Pham Appeal.)

<sup>9</sup> (See Docket Item No. 121 at 6 in No. 08-00201 JW.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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11 **Dated: May 2, 2011**

**Richard W. Wieking, Clerk**

12 **By: /s/ JW Chambers**  
13 **Susan Imbriani**  
14 **Courtroom Deputy**